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NATIONAL INDIAN GAMING COMMISSION

3

CLASS II CLASSIFICATION STANDARDS

4

GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

5

WITH THE OTOE-MISSOURIA NATION

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7

HELD IN OKLAHOMA CITY, OKLAHOMA

8

ON AUGUST 9, 2006

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REPORTED BY: TRENA K. BLOYE, CSR

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1 A P P E A R A N C E S

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4 NATIONAL INDIAN GAMING COMMISSION:

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6 Philip N. Hogen, Chairman

7 Cloyce "Chuck" V. Choney, Commissioner

8 Natalie Hemlock, Special Assistant to the

9 Commission

10 Penny Coleman, Acting General Counsel

11 Michael Gross, Senior Attorney

12 John R. Hay, Staff Attorney

13 Joseph M. Valandra, Chief of Staff

14 Tim Harper, Region Chief, Region V

15 Marcy Pate Olber, Senior Field Investigator

16 Jeanette Ross, Field Investigator

17 Brian Moody, Field Investigator

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19 ON BEHALF OF THE OTOE-MISSOURIA NATION:

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21 Bat Shunatona Wesley Hudson

22 C. Michael Harwell John Shotton

23 Midred Hudson

24 Lorraine Sigwing

25 Curtis Burgess

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1 COMMISSIONER CHONEY: Welcome to

2 this consultation meeting concerning Class II
3 matters. And for your information, this
4 meeting will be recorded and will also be made
5 a public record. A little bit later on if you
6 want a copy of a transcript, just go up to our
7 website and it will be on there.

8 If at any time you want to discuss
9 any other matters pertaining to gaming and
10 your tribe, but not in relation to the Class
11 II matters, we will have to go off the record,
12 because I'm sure you don't want other tribes,
13 other people knowing your tribal business.
14 Just let us know.

15 And also for the record, I'd like
16 to introduce Phil Hogen, he's chairman of the
17 National Indian Gaming Commission. I'm Chuck
18 Choney, commissioner.

19 This is Penny Coleman. She's our
20 acting general counsel. Seated next to her is
21 Michael Gross. He's the senior attorney with
22 the Office of General Counsel. Making her
23 exit is Marci Pate Ober. She's our
24 investigator from our Tulsa region. This is
25 John Hay, senior attorney for the Office of

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1 General Counsel. And sitting in the rear is
2 Brian Moody, another one of our field

3 investigators. So, also, if for the record,
4 if you could introduce yourselves.

5 MR. SHUNATONA: My name is Bat
6 Shunatona. I'm one of the commissioners for
7 the tribe.

8 MR. HARWELL: I'm Michael Harwell.
9 I'm the chairman of the Oklahoma Missouria
10 Tribe.

11 MS. HUDSON: Mildred Hudson. I'm
12 the council person.

13 MS. SIGWING: Lorraine Sigwing,
14 treasurer Otoe-Missouria Tribe.

15 MR. BURGESS: Curtis Burgess,
16 third member -- second member.

17 MR. HUDSON: I'm Wesley Hudson,
18 I'm the tribal secretary.

19 MR. SHOTTON: John Shotton, first
20 member, Otoe-Missouria Tribal Council.

21 COMMISSIONER CHONEY: Okay. On
22 behalf of the. I would like to welcome you to
23 this meeting. Chairman Hogen?

24 CHAIRMAN HOGEN: Yes. Welcome to
25 this government-to-government consultation.

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1 On the 25th of May of this year we published
2 in the "Federal Register" a proposal to amend
3 the definition and adopt a set of regulations
4 that would help distinguish those electronic

5 and technologic aids that tribes can use to
6 play bingo and other Class II games from those
7 Class III electronic and technologic
8 facsimiles of games of chance. Class III
9 games, of course, you have to have a compact;
10 Class II, you don't. So it's important to
11 identify that difference. And over the years
12 it's become harder and harder to do that.

13 We started writing these
14 regulations a couple of years ago. We
15 enlisted the support of a Tribal Advisory
16 Committee and we published several versions of
17 them on our website. And this spring we
18 decided to get serious and see if we were
19 going to adopt them.

20 In addition to the classification
21 regulations we were also working on a set of
22 technical standards. They are very technical
23 in nature in that they address the hardware
24 and the software that makes up this equipment
25 that these games are played with and attempt

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1 to ensure that it will be secure, it will be
2 safe, that nobody can hack into it and cheat
3 the game, cheat the tribe, so forth.

4 When we published the other regs
5 in May, we realized that because there are

6 some technological changes we needed to update
7 our tech. list. So it will be this Friday
8 when those get published in the "Federal
9 Register".

10 We have created a comment period.
11 We would like to get written comments on those
12 up through the 30th of September of this year.
13 And we have also extended the written comment
14 period for the classification of these
15 regulations to the 30th of September.

16 On the 19th of September we're
17 going to hold a public hearing on those whole
18 package, this subject of classification and
19 the technology that goes with it. That will
20 be in Washington, DC on the 19th of September.
21 And we will have several panels. We will have
22 some tribal leadership. We will have some
23 state representatives that will give a state
24 point of view. We will have some
25 manufacturers, vendors that will design, make,

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1 and sell this equipment. We will have some
2 folks who will shed light on the economic
3 impact that regulations like this may have in
4 the Indian country and the surrounding
5 communities, perhaps.

6 So at the end of this process,
7 after the 30th of September, we will look

8 carefully at all that has been said to us and
9 written to us. We will look at what has been
10 drafted and decide, do we want to go ahead and
11 do this, and if we decide we do, do we want to
12 change that we have drafted here and, if so,
13 how. If we do that, why, then we will publish
14 a final set of regulations. There will be a
15 period before which they will then become
16 effective. And thereafter there will be a
17 phase-in period for tribes to come into
18 compliance.

19 We know that Class II gaming is
20 extremely important to all tribes, maybe no
21 place more important than Oklahoma, and that
22 there was a real struggle out here for a long
23 time trying to figure out what was Class II
24 and what was Class III and to get a compact.
25 And still all the problems haven't been

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1 resolved.

2 So, we are eager to hear your
3 comments. You are the 21st tribe that we have
4 consulted with here in two days. So if we
5 look a little weary, that's probably because
6 we are. But we are delighted to be here with
7 you. We would very much like to hear the
8 tribe's view.

9 MS. HUDSON: But don't get us
10 mixed up with the some other tribes.

11 MR. HARWELL: Well, Chairman
12 Hogen, Class II gaming is an important part to
13 our tribe as it is to all tribes in Oklahoma
14 as you stated. You know, we are compacted
15 here with the State of Oklahoma. So we do
16 have a mixture of games.

17 The thing that concerns me, and I
18 know it concerns our council, is whether
19 Oklahoma, you know -- the compact here has a
20 cap on it, and there is a termination date for
21 that. So we're looking at, with the changing
22 of the Class II, you know, how is that going
23 to affect us down the road when Oklahoma might
24 change administrations and leaderships, and
25 they might not be friendly toward renewing the

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1 compact. And will that leave us totally out
2 of the gaming business or where are we?

3 We don't want to go back to paper
4 bingo and pull-tabs.

5 CHAIRMAN HOGEN: Well, we're
6 concerned about that, too. And, certainly, if
7 we adopt these regulations as they are now
8 drafted, you would be a lot further down the
9 road than paper bingo and pull-tabs.

10 You know, there are a series of

11 cases that were decided along the way here.
12 Most of those dealt with what they call the
13 Mega Mania machine. That was kind of a clunky
14 bingo terminal that had some bingo cards on
15 it. And you couldn't play that game until you
16 had twelve people playing and it took about a
17 minute to play.

18 And when tribes started using it
19 the Justice Department came along and said,
20 "Hey, that's unlawful. You don't have any
21 compacts out here, and the Johnson Act says
22 you can't play gambling devices unless you
23 have a compact." And the tribes said, "No,
24 this isn't a gambling device. This is just an
25 aid to the play of those games." And the

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1 courts agreed with the tribes. They said,
2 "Look, that's just helping them play. You
3 can't play until you have got these twelve
4 people interacting with each other and with
5 the game. And Justice Department, you are
6 wrong."

7 Well, you know, there have been
8 some other cases. And it's still hard to know
9 where that line is. The game that could be
10 played under these regulations that we have
11 proposed could be played with as few as two

12 people. And it wouldn't take a minute to
13 play. It would take about ten seconds to
14 play. Now, I know there are those that say,
15 "That's too long and it will slow us down,"
16 and so forth.

17 But kind of the theory that
18 evolved, if you study those cases and if you
19 study that, is what helps distinguish bingo
20 from slot machines is the participation of the
21 players. Now, if the game goes so fast the
22 players can't participate, I think you have
23 crossed the line. I think you have become a
24 facsimile of a game of chance.

25 So we're saying have a little

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1 interval to let the players do. In paper
2 bingo, if you're not paying attention you can
3 sleep your win and somebody else will get the
4 bingo. That's the way this will work, too.
5 You have got to be in there and act to play
6 the game. If you let we let the machine do it
7 all, if it's totally automatic, it's a
8 facsimile of a game of chance.

9 So we're trying to draw the line,
10 but far enough out there so the tribes can
11 still have fast, fun, profitable games, but so
12 we can say with a straight face to the Justice
13 Department or the State of Oklahoma, or

14 whoever we need to, "This is Class II. It's
15 distinguishable from Class III." So that's
16 where we're trying to go and it's complicated.

17 MR. HARWELL: Could you elaborate
18 a little bit, maybe not all members of the
19 council are familiar with the Johnson Act, so
20 they can be a little more familiar with what
21 the change is they are looking at doing with
22 that.

23 CHAIRMAN HOGEN: Yeah. Let me
24 try. In 1951 gambling was kind of novel in
25 the United States. The only place slot

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1 machines were legal was Las Vegas or Nevada.
2 And so Senator Estes Kefauver took the
3 committee out there. And they were worried
4 about the mob and organized crime.

5 And they passed the Johnson Act.
6 They said: You can't transport slot machines
7 across state lines unless the state they are
8 transported to said they were legal. And
9 there was only one place. And that addressed
10 gambling devices.

11 Well, in 1962 Bobby Kennedy and
12 the Justice Department were worried about the
13 mob again, and so they amended that act. So
14 they said: You can't have gambling devices in

15 the District of Columbia or Indian country.
16 So that means if you have any gambling device
17 on a reservation, it was illegal.

18 And then along came the Indian
19 Gaming Regulatory Act. And it said: There's
20 an exception. You can have gambling devices
21 in Indian country if you have a Class III
22 compact.

23 Now, that's simple enough. But it
24 also said you can use electronic and
25 technologic aids to play bingo. Well, therein

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1 is the challenge. What's the difference
2 between those technologic aids and those
3 gambling devices or electronic facsimiles. So
4 there have been court cases.

5 Here in the Oklahoma there were a
6 number of tribes that went too far. They were
7 playing Class III games without a compact, and
8 the National Indian Gaming Commission shut
9 them down, issued a closure on them, closed
10 their doors. I think one of them got fined \$9
11 million for doing that.

12 That's the last thing we want to
13 do. We don't want to see tribes get in
14 trouble with us or the Justice Department. We
15 want to have a bright line there so you know,
16 if you're going to invest millions of dollars

17 in equipment, somebody is not going to come
18 along tomorrow and either say, "You're in
19 trouble," or "You can't use this anymore."
20 So, that's where we're trying to go.

21 MS. SIGWING: Who are the people
22 that's going to make the decision as to
23 whether we are going to change those or not?

24 CHAIRMAN HOGEN: Chuck Choney and
25 Phil Hogen right now. We're a three-member

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1 commission ordinarily, but we have got a
2 vacancy right now. So the Indian Gaming
3 Regulatory Act created us, said there will be
4 a National Indian Gaming Commission. And it
5 directed that we promulgate some federal
6 standards. We think this is an area that kind
7 of cries out for a standard, and we're trying
8 to get that done.

9 COMMISSIONER CHONEY: We have got
10 a rough draft out already. I don't know if
11 you have seen it yet. But if you haven't,
12 again, it's on our website. For about the
13 last three weeks we have probably met with
14 about 60 tribes, Pacific Northwest, Southern
15 California, Minnesota, and now here.

16 And we have already received
17 written comments. So we're going to take all

18 of the comments, the written comments that
19 people will send in to us and all of the
20 comments that we actually heard, sat across
21 the table from people, airing their
22 displeasure or airing their support for us or
23 airing what should be or should not be in it.

24 We are going to take those
25 comments, we are going to look at them

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1 closely. And we are going to see some common
2 denominators. And right now we're getting a
3 real good idea as to, you know, what we're
4 going to -- how we're going to amend that or
5 change that, that draft that we already have
6 out.

7 So, it's going to take a while
8 yet. I mean, it won't be next week. We're
9 shooting -- I really hate to give a time
10 frame, but we want to do this as quick as
11 possible.

12 MS. SIGWING: I'd like to get one
13 of your rough drafts.

14 CHAIRMAN HOGEN: Well, we just
15 shipped our box. We had to have the box over
16 to the shipping point at 6:00, so I don't know
17 if we have a copy. But if you can't get one
18 from somebody who has got a computer, why we
19 will sure send you one.

20 MR. HARWELL: I can get you one.

21 MS. SIGWING: I want one from you.

22 (Referring to Chairman Hogen.)

23 CHAIRMAN HOGEN: All right. If
24 you will give me your name and address, I will
25 send it to you.

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1 MR. SHOTTON: Well, one concern
2 that I have that seems apparent is that in the
3 future when these new regulations come about,
4 and to play the type of games we are playing
5 now that have to have a compact, as a smaller
6 tribe in Oklahoma, it seems to me that a lot
7 of times we don't have a fair spot at the
8 table.

9 And compacts in the past, and
10 different areas of compacts, traditionally the
11 government goes and deals with the larger
12 tribes on the eastern side of the state and we
13 get to pick up what's left. That puts us at a
14 real disadvantage. I'm sure you have heard
15 that through other tribes in the last couple
16 of days. Class II, the way it is now, it
17 creates a somewhat more level playing field
18 for us.

19 Just like Chairman Harwell said,
20 as administrations change, right now it hasn't

21 been great, but it can get a lot worse. As a
22 small tribe with a smaller gaming operation
23 than some of the larger tribes here in
24 Oklahoma, I can really see that will be a huge
25 problem for us and our gaming operations in

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1 the future. That's one main concern that I
2 see. That's not tomorrow, but it's as soon as
3 that next compact ends.

4 CHAIRMAN HOGEN: Well, it's a
5 valid point. And this last compact was
6 negotiated, you know, with some uncertainty
7 out there. Nobody knew for sure what was or
8 wasn't Class II. They were talking about
9 Class II 1/2 and things like that. I hope,
10 and I don't have a crystal ball. I can't say
11 for sure. But I think it would be easier to
12 negotiate if you knew what the alternative was
13 for sure, if there wasn't any argument over
14 what we tribes have a right to do without a
15 compact.

16 So we're going to try to get
17 there, but we will have that concern in mind.
18 We know that you guys didn't drive the
19 negotiations or form this compact. It
20 probably was some of the larger Civilize
21 Tribes that were in the forefront of that.

22 Well, we hope that you will take a

23 look at what we have drafted. And if you have
24 comments, we would love to get your written
25 comments, and we will read them before we take

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1 our final action. In the meantime, if there
2 are questions, don't hesitate to call us.

3 MR. HARWELL: Very good.

4 CHAIRMAN HOGEN: All right. Thank
5 you for coming. This was a good way to end
6 our two-day session.

7 (Proceedings concluded.)

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1 C E R T I F I C A T E

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4 STATE OF OKLAHOMA)
) SS:
5 COUNTY OF OKLAHOMA)

6 I, Trena K. Bloye, Certified Shorthand
7 Reporter for the State of Oklahoma, certify that the
8 foregoing transcript of proceedings taken by me in
9 stenotype and thereafter transcribed is a true and
10 correct transcript of the proceedings; that they
11 were taken on August 9, 2006, at the Cox Convention
12 Center, Oklahoma City, State of Oklahoma; that I am
13 not an attorney for nor a relative of any said
14 parties, or otherwise interested in the event of
15 said action.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and seal of office on this the 11th day of
18 August, 2006.

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Trena K. Bloye
Certified Shorthand Reporter
for the State of Oklahoma

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